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bcc    Docket Analyst, ORC            C-14J  
       Nola M. Hicks, ORC           C-14J  
       Joseph Fredle                5-SEDO  
       Sally Jansen, EESS           SE-5J  
       John Maritote, EESS          SE-5J  
       Fushi Cai, EESS              SE-5J  
       Tony Audia, PAAS            MF-10J  
       Records Center              SMR-7J w/ concurrent review  
       ERB Read File  
       Toni Lesser, Public Affairs   P-19J w/out attachments  
       Michael T. Chezick, Department of Interior

**BOWERS BATTERY SITE  
NEW PHILADELPHIA, OHIO**

**ADMINISTRATIVE ORDER BY CONSENT  
APPROVED BY SUPERFUND DIVISION DIRECTOR ON MARCH 19, 2001.**

Sent to:        Exide Technologies  
                 Attn: Mr. Ari Levine, Deputy General Counsel  
                 214 Carnegie Center, Suite 101  
                 Princeton, NJ 08543

Date sent:     March 20, 2001

CONCURRENCE PAGE FOR:

BOWERS BATTERY SITE  
NEW PHILADELPHIA, OHIO

ADMINISTRATIVE ORDER BY CONSENT FOR SFD DIRECTOR SIGNATURE  
(RESPONDENT IS EXIDE CORPORATION)

Date approved by SFD Director: March 19, 2001

ERB ENF. SPECIALIST	ERB OSC	ORC STAFF ATTORNEY
<i>SPJ</i> 03/15/2001	<i>JA</i> 3-15-01	<i>S. Mendoza for Nela Hicks</i> 3/16/01

ERB BR. CHIEF	ENFORCEMENT COORDINATOR	SUPERFUND DIV. DIRECTOR
<i>REB</i> 3-16-01	<i>plb</i> 3/19/01	<i>WEM</i> 3/19/01



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

**MAR 20 2001**

REPLY TO THE ATTENTION OF:

Bowers Battery Site SE-5J

**VIA FEDERAL EXPRESS (Tracking No. 2854368591)**

Exide Technologies  
214 Carnegie Center, Suite 101  
Princeton, NJ 08543

Attention: Mr. Ari D. Levine, Deputy General Counsel

Re: Bowers Battery Site, New Philadelphia, Ohio  
Administrative Order by Consent

Dear Mr. Levine:

Enclosed please find an executed copy of the Administrative Order by Consent issued for the Bowers Battery Site pursuant to Sections 106 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§9606 and 9622. Thank you for your cooperation in this matter.

If you have any questions regarding the Order, please contact Nola M. Hicks, Associate Regional Counsel, at (312) 886-7949 or Joseph Fredle, On-Scene Coordinator, at (440) 250-1740.

Sincerely yours,

A handwritten signature in black ink, appearing to read "W. E. Muno".

William E. Muno, Director  
Superfund Division

Enclosure

cc: Ohio EPA Superfund Program Manager, Columbus, OH  
Robert L. Collings, Esq., Schnader, Harrison, Segal & Lewis LLP, Philadelphia, PA

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**V-W- '01-C-635**

IN THE MATTER OF:	)	Docket No.
	)	
<b>BOWERS BATTERY SITE</b>	)	<b>ADMINISTRATIVE ORDER BY</b>
<b>NEW PHILADELPHIA, OHIO</b>	)	<b>CONSENT PURSUANT TO</b>
	)	<b>SECTION 106 OF THE</b>
	)	<b>COMPREHENSIVE</b>
	)	<b>ENVIRONMENTAL RESPONSE,</b>
Respondent:	)	<b>COMPENSATION, AND</b>
	)	<b>LIABILITY ACT OF 1980,</b>
Exide Corporation	)	<b>as amended, 42 U.S.C.</b>
	)	<b>§9606(a)</b>

**I. JURISDICTION AND GENERAL PROVISIONS**

This Order is entered voluntarily by the United States Environmental Protection Agency ("U.S. EPA") and the Respondent. The Order is issued pursuant to the authority vested in the President of the United States by Sections 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§9606(a), 9607 and 9622. This authority has been delegated to the Administrator of the U.S. EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

This Order provides for performance of removal actions and reimbursement of response costs incurred by the United States in connection with property located at the northeast corner of the intersection of 5<sup>th</sup> Street NW and Park Avenue NW (the "Bowers Battery Site" or the "Site"). This Order requires the Respondent to conduct removal actions described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

A copy of this Order will also be provided to the State of Ohio, which has been notified of the issuance of this Order pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

Respondent's participation in this Order shall not constitute an admission of liability or of U.S. EPA's findings or determinations contained in this Order except in a proceeding to enforce the terms of this Order. Respondent agrees to comply with and be bound by the terms of this Order. Respondent further agrees that it will not contest the basis or validity of this Order or its terms.

## **II. PARTIES BOUND**

This Order applies to and is binding upon U.S. EPA, and upon Respondent and Respondent's heirs, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Order.

Respondent shall ensure that its contractors, subcontractors, and representatives comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

## **III. EPA'S FINDINGS OF FACT**

Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds that:

1. The Bowers Battery Site consists of portions of four residential lots and portions of at least two and possibly all the lots that the Veterans of Foreign Wars (VFW) Club owns and/or occupies at the intersection of 5<sup>th</sup> Street NW and Park Avenue NW in New Philadelphia, Tuscarawas County, Ohio. The Site is in a mixed residential and commercial area with environmental justice concerns.
2. In early September 2000, a resident at 463 5<sup>th</sup> Street NW discovered Bowers Battery casings in the soil. On September 20, 2000, the Ohio Environmental Protection Agency (OEPA) collected soil samples on that property; analytical results indicated that the samples contained 4%-5% lead. On October 30, 2000, OEPA referred the Bowers Battery Site to U.S. EPA.
3. On October 31, 2000, U.S. EPA with the help of OEPA conducted an integrated site assessment. Analytical results of samples that U.S. EPA collected confirmed that substantial portions of the VFW lots at 437-453 Park Avenue N.W. (Lots 2778-2882), 467 Park Avenue N.W. (Lot 2776), 463 5<sup>th</sup> Street N.W. (Lot 2775), and 467 5<sup>th</sup> Street N.W. (Lot 2774) have lead contamination at levels greater than 400 ppm and as high as 56,000 ppm.
4. Historical directories indicate that The Patterson Corporation and/or Bowers Battery and Spark Plug Company operated at the Site from approximately 1938 to 1967. General Battery and Ceramic Corporation (GBCC) incorporated as Bowers Battery and Spark Plug Company in Pennsylvania in 1931 and adopted the name GBCC in 1960. The Patterson Corporation, which was a division of GBCC of Reading, Pennsylvania, manufactured Bowers batteries and spark plugs at the New Philadelphia plant. Bowers Battery is also listed as a division of GBCC. GBCC adopted the name General Battery Corporation in 1969. Through mergers and a consolidation, Exide Corporation is the successor to these battery manufacturers. Homes and VFW Post 1445 now occupy the Site.

5. From 1938 to 1945, The Patterson Corporation owned Lots 2774-2776 and Lots 2779-2782.
6. In July 1945, The Patterson Corporation conveyed the seven lots to L. M. Patterson, Jr., president of The Patterson Corporation. In February 1947, Mr. Patterson conveyed the lots back to The Patterson Corporation.
7. On February 15, 1967, The Patterson Corporation quit claimed the seven lots to GBCC. GBCC had already conveyed the seven lots to Harry Gulley, Jr., on January 31, 1967.
8. In March 1974, Harry Gulley, Jr. conveyed Lots 2774, 2775, and the eastern 1/3 of Lot 2776 to Paul E. Mishler.
9. Between April 1974 and September 1975, Paul E. Mishler developed Lot Nos. 2774 and 2775, as well as the eastern 1/3 of Lot 2776 for residences and conveyed the lots to individuals.
10. In August 1968, Harry Gulley, Jr., conveyed the western 2/3 of Lot 2776 to Oran N. Turner, a current residential property owner.
11. In January 1975, Harry Gulley, Jr., conveyed Lots 2780-2782 and part of Lot 2779 plus vacated alleys to Snyder Manufacturing Company, Inc.
12. In July 1977, Snyder Manufacturing Company, Inc., conveyed the lots listed in item 12 above to Snyder Laboratories, Inc. In June 1983, Snyder Laboratories, Inc., conveyed those lots to current owner V.E.J. Company, Inc., a holding company for the VFW building.
13. U.S. EPA has fenced the area and covered the contaminated soils with tarps, but trespassers could access the Site.
14. Except for purposes of enforcing the Order below, Respondent does not accept or agree with these determinations.

#### **IV. EPA'S CONCLUSIONS OF LAW AND DETERMINATIONS**

Based on the Findings of Fact set forth above, and the Administrative Record supporting these removal actions, U.S. EPA has determined that:

1. The Bowers Battery Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. §9601(9).
2. Lead is a "hazardous substance" as defined by Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

3. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. §9601(21).
4. Respondent Exide Corporation is either (a) person(s) who at the time of disposal of any hazardous substances owned or operated the Site, or who arranged for disposal or transport for disposal of hazardous substances at the Site. Respondent therefore may be liable under Section 107(a) of CERCLA, 42 U.S.C. §9607(a).
5. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§9601(8) and (22).
6. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 CFR §300.415(b)(2). These factors include, but are not limited to, the following:

a. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants:

The Bowers Battery Site is situated in a mixed residential and commercial area. The area of contamination is unfenced, uncontrolled, and readily accessible by human and animal populations. Analytical results indicate that high levels of lead are present in surface soils and buried waste. Some of the samples collected indicate that the levels of toxicity characteristic leaching procedure lead present in the waste and surrounding soils exceed the Resource Conservation and Recovery Act regulatory limit of 5 mg/L.

b. High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate:

Surficial soil samples collected during U.S. EPA's assessment of the Site indicated the presence of lead well above the direct contact level of concern of 400 ppm. Most of the surface samples in the area of contamination range from 400 ppm to 56,000 ppm, with an average surface level in the 2,000 to 4,000 ppm range. There are no controls in place to prevent migration of these hazardous substances, nor are there any deterrents for humans or animals to track surficial contaminants off Site. Numerous human receptors are located within a mile of the Site.

c. The unavailability of other appropriate federal or state response mechanisms to respond to the release:

This factor supports the actions required by U.S. EPA at the Site because OEPA does not have the resources to respond to the emergency situation.

7. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. §9606(a).
8. The removal actions required by this Order, if properly performed under the terms of this Order, are consistent with the NCP. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment.

## **V. ORDER**

Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, it is hereby ordered and agreed that Respondent shall comply with the following provisions, including but not limited to all documents attached to or incorporated into this Order, and perform the following actions:

### **1. Designation of Contractor, Project Coordinator, and On-Scene Coordinator**

Respondent shall perform the removal actions required by this Order itself or retain (a) contractor(s) to implement the removal actions. Respondent shall notify U.S. EPA of Respondent's qualifications or the name and qualifications of such contractor(s), whichever is applicable, within 2 business days of the effective date of this Order. Respondent shall also notify U.S. EPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Order at least 2 business days prior to commencement of such work. U.S. EPA retains the right to disapprove of the Respondent or any of the contractors and/or subcontractors retained by the Respondent. If U.S. EPA disapproves a selected contractor, Respondent shall retain a different contractor within 7 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that contractor's name and qualifications within 8 business days of U.S. EPA's disapproval.

Within 2 business days after the effective date of this Order, the Respondent shall designate a Project Coordinator who shall be responsible for administration of all the Respondent's actions required by the Order. Respondent shall submit the designated coordinator's name, address, telephone number, and qualifications to U.S. EPA. To the greatest extent possible, the Project Coordinator shall be present on-site or readily available during site work. U.S. EPA retains the right to disapprove of any Project Coordinator named by the Respondent. If U.S. EPA disapproves a selected Project Coordinator, Respondent shall retain a different Project Coordinator within 7 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that person's name and qualifications within 8 business days of U.S. EPA's disapproval.



Receipt by Respondent's Project Coordinator of any notice or communication from U.S. EPA relating to this Order shall constitute receipt by Respondent.

The U.S. EPA has designated Joseph Fredle of the Emergency Response Branch, Region 5, as its On-Scene Coordinator (OSC). Respondent shall direct all submissions required by this Order to the OSC at U.S. EPA, Emergency Response Branch, 25089 Center Ridge Road, Westlake, OH 44145, by certified or express mail. Respondent shall also send a copy of all submissions to Nola M. Hicks, Associate Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois, 60604-3590. Respondent is encouraged to make its submissions to U.S. EPA on recycled paper (which includes significant postconsumer waste paper content where possible) and using two-sided copies.

U.S. EPA and Respondent shall have the right, subject to the immediately preceding paragraph, to change their designated OSC or Project Coordinator. U.S. EPA shall notify the Respondent, and Respondent shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. The initial notification may be made orally but it shall be promptly followed by a written notice.

## 2. Work to Be Performed

Respondent shall perform, at a minimum, the following removal actions:

- a. Establish Site control/security;
- b. Establish and implement a Site health and safety plan;
- c. Establish a Site command post and control zones;
- d. Conduct invasive test excavations to determine more completely the extent of subsurface contamination on Site;
- e. Excavate, treat (if necessary, to meet RCRA land disposal restriction treatment standards), transport, and properly dispose of (in accordance with U.S. EPA's Off-Site Rule) all lead-contaminated waste found on residential property at 400 ppm of total lead or higher, and on commercial property at 1000 ppm or higher.
- f. Under the direction of the OSC, conduct confirmatory soil sampling to ensure removal of contamination to proper standards;
- g. Backfill and restore the excavation areas; and
- h. Assess the surrounding areas to insure that contaminants have not migrated off-site.

## **2.1 Work Plan and Implementation**

Within 10 business days after the effective date of this Order, the Respondent shall submit to U.S. EPA for approval a draft Work Plan for performing the removal activities set forth above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Order.

U.S. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If U.S. EPA requires revisions, Respondent shall submit a revised draft Work Plan within 6 business days of receipt of U.S. EPA's notification of required revisions. Respondent shall implement the Work Plan as finally approved in writing by U.S. EPA within 8 business days of U.S. EPA's approval. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondent shall notify U.S. EPA at least 48 hours prior to performing any on-site work pursuant to the U.S. EPA approved Work Plan. Respondent shall not commence or undertake any removal actions at the Site without prior U.S. EPA approval.

## **2.2 Health and Safety Plan**

Within 10 business days after the effective date of this Order, the Respondent shall submit for U.S. EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall comply with applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 CFR Part 1910. If U.S. EPA determines it is appropriate, the plan shall also include contingency planning. Respondents shall incorporate all changes to the plan recommended by U.S. EPA, and implement the plan during the pendency of the removal action.

## **2.3 Quality Assurance and Sampling**

All sampling and analyses performed pursuant to this Order shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with U.S. EPA guidance.

Upon request by U.S. EPA, Respondent shall have such a laboratory analyze samples submitted by U.S. EPA for quality assurance monitoring. Respondent shall provide to U.S. EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondent shall also ensure provision of analytical tracking information consistent with OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

Upon request by U.S. EPA, Respondent shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent or its contractors or agents while performing work under this Order. Respondent shall notify U.S. EPA not less than 3 business days in advance of any sample collection activity. U.S. EPA shall have the right to take any additional samples that it deems necessary.

#### 2.4 Post-Removal Site Control

In accordance with the Work Plan schedule, or as otherwise directed by the OSC, Respondent shall submit a proposal for post-removal site control, consistent with Section 300.415(l) of the NCP, 40 CFR §300.415(l), and OSWER Directive 9360.2-02. Upon U.S. EPA approval, Respondent shall implement such controls and shall provide U.S. EPA with documentation of all post-removal site control arrangements.

#### 2.5 Reporting

Respondent shall submit a monthly written progress report to U.S. EPA concerning actions undertaken pursuant to this Order, beginning 30 calendar days after the date of U.S. EPA's approval of the Work Plan, until termination of this Order, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

#### 2.6 Final Report

Within 60 calendar days after completion of all removal actions required under this Order, the Respondent shall submit for U.S. EPA review a final report summarizing the actions taken to comply with this Order. The final report shall conform to the requirements set forth in Section 300.165 of the NCP, 40 CFR §300.165. The final report shall also include a good faith estimate of total costs incurred in complying with the Order, a listing of quantities and types of materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits).

The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

### 3. Access to Property and Information

Respondent shall provide or obtain access to the Site and off-site areas to which access is necessary to implement this Order, and shall provide access to all records and documentation related to the conditions at the Site and the actions conducted pursuant to this Order. Such access shall be provided to U.S. EPA employees, contractors, agents, consultants, designees, representatives, and State of Ohio representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct actions which U.S. EPA determines to be necessary. Respondent shall submit to U.S. EPA, upon request, the results of all sampling or tests and all other data generated by Respondent or its contractor(s), or on the Respondent's behalf during implementation of this Order.

Where work under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within 10 business days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondent shall immediately notify U.S. EPA if, after using its best efforts, it is unable to obtain such agreements. Respondent shall describe in writing its efforts to obtain access. U.S. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as U.S. EPA deems appropriate. Respondent shall reimburse U.S. EPA for all costs and attorneys fees incurred by the United States in obtaining such access.

### 4. Record Retention, Documentation, Availability of Information

Respondent shall preserve all documents and information, in its possession or the possession of its contractors, subcontractors or representatives, relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for 6 years following completion of the removal actions required by this Order. At the end of this 6-year period and at least 60 days before any document or information is destroyed, Respondent shall notify U.S. EPA that such documents and information are available to U.S. EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to U.S. EPA. In addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the 6-year period at the written request of U.S. EPA. Any information that Respondent is required to provide or maintain pursuant to this Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. §3501 et seq.

### 5. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by U.S. EPA, with the U.S. EPA Off-Site Rule, 40 CFR §300.440, 58 Fed. Reg. 49215 (Sept. 22, 1993).

### 6. Compliance With Other Laws

Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. §9621(e), and 40 CFR §300.415(j). In accordance with 40 CFR §300.415(j), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by U.S. EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal environmental or state environmental or facility siting laws.

### 7. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the activities conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondent shall immediately take all appropriate action to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Site conditions. If Respondent fails to respond, U.S. EPA may respond to the release or endangerment and reserve the right to recover costs associated with that response.

Respondent shall submit a written report to U.S. EPA within 7 business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. Respondent shall also comply with any other notification requirements, including those in Section 103 of CERCLA, 42 U.S.C. §9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §11004.

## **VI. AUTHORITY OF THE U.S. EPA ON-SCENE COORDINATOR**

The OSC shall be responsible for overseeing the implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by

U.S. EPA or Respondent at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

## **VII. REIMBURSEMENT OF COSTS**

Respondent shall pay all past response costs and oversight costs of the United States related to the Site that are not inconsistent with the NCP. As soon as practicable after the effective date of this Order, U.S. EPA will send Respondent a bill for "past response costs" at the Site.

U.S. EPA's bill will include an Itemized Cost Summary." "Past response costs" are all costs, including, but not limited to, direct and indirect costs and interest, that the United States, its employees, agents, contractors, consultants, and other authorized representatives incurred and paid with regard to the Site prior to the date through which the Itemized Cost Summary runs.

In addition, U.S. EPA will send Respondent a bill for "oversight costs" on an annual basis. "Oversight costs" are all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports, and other items pursuant to this AOC.

"Oversight costs" shall also include all costs, including direct and indirect costs, paid by the United States in connection with the Site between the date through which the U.S. EPA's Itemized Cost Summary for "past response costs" ran and the effective date of this AOC.

Respondent shall, within 30 calendar days of receipt of a bill, remit a cashier's or certified check for the amount of the bill made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency  
Program Accounting & Analysis Section  
P.O. Box 70753  
Chicago, Illinois 60673

Respondent shall simultaneously transmit a copy of the check to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Response Costs - Bowers Battery Site" and shall reference the payer's name and address, the U.S. EPA site identification number (B5S9), and the docket number of this Order.

In the event that any payment is not made within the deadlines described above, Respondent shall pay interest on the unpaid balance. Interest is established at the rate specified in Section 107(a) of CERCLA, 42 U.S.C. §9607(a). The interest shall begin to accrue on the date of the Respondent's receipt of the bill (or for past response costs, on the effective date of this Order). Interest shall accrue at the rate specified through the date of the payment. Payments of interest

made under this paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section.

Respondent may dispute all or part of a bill for Oversight costs submitted under this Order, if Respondent alleges that U.S. EPA has made an accounting error, or if Respondent alleges that a cost item is inconsistent with the NCP. Respondent will be provided reasonable access to information needed to assess consistency with the NCP.

If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs into the Hazardous Substance Fund as specified above on or before the due date. Within the same time period, Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of both checks to the OSC. Respondent shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 20 calendar days after the dispute is resolved.

#### **VIII. DISPUTE RESOLUTION**

The parties to this Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Order.

If the Respondent objects to any U.S. EPA action taken pursuant to this Order, including billings for response costs, the Respondent shall notify U.S. EPA in writing of its objection within 10 calendar days of such action, unless the objection has been informally resolved. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondent's position, and all supporting documentation on which such party relies. U.S. EPA shall submit its Statement of Position, including supporting documentation, no later than 10 calendar days after receipt of the written notice of dispute. In the event that these 10-day time periods for exchange of written documents may cause a delay in the work, they shall be shortened upon, and in accordance with, notice by U.S. EPA. The time periods for exchange of written documents relating to disputes over billings for response costs may be extended at the sole discretion of U.S. EPA.

U.S. EPA shall maintain an administrative record of any dispute under this Section. The record shall include the written notification of such dispute, and the Statement of Position served pursuant to the preceding paragraph. Upon review of the administrative record, the Director of the Superfund Division, U.S. EPA Region 5, shall resolve the dispute consistent with the NCP and the terms of this Order.

Respondent's obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this

Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with U.S. EPA's decision, whichever occurs.

#### **IX. FORCE MAJEURE**

Respondent agrees to perform all requirements under this Order within the time limits established under this Order, unless the performance is delayed by a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the control of Respondent or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, that delays or prevents performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work or increased cost of performance.

Respondent shall notify U.S. EPA orally within 24 hours after Respondent become aware of any event that Respondent contends constitutes a force majeure, and in writing within 7 calendar days after the event. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondent shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this Section shall be grounds for U.S. EPA to deny Respondent an extension of time for performance. Respondent shall have the burden of demonstrating by a preponderance of the evidence that the event is a force majeure, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay.

If U.S. EPA determines a delay in performance of a requirement under this Order is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by U.S. EPA. Such an extension shall not alter Respondent's obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure.

#### **X. STIPULATED AND STATUTORY PENALTIES**

For each day, or portion thereof, that Respondent fails to fully perform any requirement of this Order in accordance with the schedule established pursuant to this Order, Respondent shall be liable as follows:



THE MATTER OF:

IRS BATTERY SITE  
PHILADELPHIA, OHIO

**SIGNATORIES**

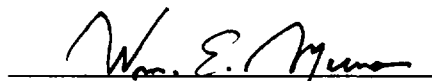
undersigned representative of a signatory to this Administrative Order on Consent certifies  
he or she is fully authorized to enter into the terms and conditions of this Order and to bind  
signatory, its directors, officers, employees, agents, successors and assigns, to this  
consent.

dated this 15<sup>th</sup> day of March, 2001.



Ari D. Levine  
Deputy General Counsel + Assistant Secretary  
Exide Corporation

SO ORDERED AND AGREED



William E. Munro, Director  
Superfund Division  
United States Environmental Protection Agency  
Region 5

Date: 3/19/01

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